

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 98-700

January 14, 1999

BANGOR HYDRO-ELECTRIC COMPANY
Request for Approval of Employee
Transition Plan for Benefits and
Services

ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order we delay final consideration of Bangor Hydro-Electric Company's Employee Transition Plan for Benefits and Services and request further briefing by interested persons on the issue of whether employees who are offered a comparable job with an unaffiliated company are eligible for statutory benefits.

II. BACKGROUND

On September 10, 1998, Bangor Hydro-Electric Company (Bangor Hydro) filed its Request for Approval of Employee Transition Plan for Benefits and Services (Plan) with the Commission. The Commission sought comment on whether the proposed Plan met the requirements of 35-A M.R.S.A. § 3216 and Chapter 303 of our Rules.

On October 16, 1998, the International Brotherhood of Electrical Workers (Union) filed an objection to the Plan claiming that the Plan failed to meet the statutory requirements. Specifically, the Union objected to statements in the Introduction and General Provisions portion of the Plan which stated that termination benefits payable pursuant to the Union's collective bargaining agreement would be set off with the benefits required under 35-A M.R.S.A. § 3216. The Union argued that the statutory benefits were cumulative of any other benefits, and thus, Bangor Hydro must provide both collective bargaining benefits and statutory benefits. The Union also objected to those provisions of the Plan which seemed to indicate that an employee who took a comparable job with the new owner would not be eligible for the termination benefits required under the collective bargain agreement. Finally, the Union requested a technical conference to discuss these issues further.

On November 20, 1998, the Office of the Public Advocate (OPA) filed comments on the Union's objection. The OPA stated that it did not believe that Bangor Hydro's customers should reimburse

Bangor Hydro in rates for anything more than the two-week-per-year-of-employment requirement of 35-A M.R.S.A. § 3216. Finally, the OPA joined in the Union's request for a technical conference.

On November 20, 1998, Bangor Hydro responded to the Union's objection. Bangor Hydro first stated that it consulted with the Union before it submitted the Plan to the Commission (as required by 35-A M.R.S.A. § 3216) and that the Union did not raise its objections at that time. Bangor Hydro then proposed to amend the Plan to make clear that an employee who accepted a comparable job from the new owner would be entitled to the termination benefits required under the collective bargaining agreement. Finally, Bangor Hydro reiterated its belief that 35-A M.R.S.A. § 3216 requires a minimum level of benefits and that it does not specify how the requirements can be met. Accordingly, Bangor Hydro claims that it can satisfy the statutory requirements with collective bargaining benefits.

On December 22, 1998, the Union filed additional comments requesting that the Commission defer any action on Bangor Hydro's Plan until the contested issues were negotiated and mutually agreed upon or adjudicated by an appropriate labor relations forum. Bangor Hydro responded on January 4, 1999, by claiming that under both the statute and the Commission's Rules, the matter was ripe for decision. The Union also filed another submission on January 4, again requesting that the Commission defer decision on labor issues and also raising two new issues. Specifically, the Union contested Bangor Hydro's definition of the term "comparable job" and Bangor Hydro's exclusion of employees hired by the new owners of Bangor Hydro's generating assets from coverage under the Plan.

III. DECISION

In the course of our review of Bangor Hydro's plan and the comments we have received from the OPA and the Union, we have uncovered an ambiguity in section 3216 which raises several important questions. Because of the potentially significant impact our decision will have on the amount of transition benefits Bangor Hydro's ratepayers will pay for in rates¹ we are requesting further briefing on two issues.

Bangor Hydro's plan, as currently written, excludes all Bangor Hydro employees who are offered a comparable job by the unaffiliated company which will buy Bangor Hydro's generating assets (new owners) from eligibility for the statutory benefits.

¹ Although we they are not directly before us in this proceeding, we do note that the employee transition benefit plans of both Central Maine Power Company and Maine Public Service Company contain provisions similar to Bangor Hydro's Plan.

Neither the Plan nor any of Bangor Hydro's comments explain the grounds for the exclusions.

Section 3216 specifically excludes employees who are transferred within the utility or to an affiliated company from eligibility for transition benefits, while it is silent on the issue of eligibility for employees who are offered a job with an unaffiliated entity which acquires a utility's generating assets. It is unclear whether the Legislature intended to make employees hired by the new owner eligible for benefits by not including them in the specific exclusion applicable to affiliated companies, or whether they intended to exclude those employees because they believed the term "laid off" would not cover employees who were offered comparable employment by the new owners.

Thus, we request that interested persons brief the following two issues:

(1) Discuss and analyze whether, under 35-A M.R.S.A. § 3216, employees who are offered employment by the new owners are included or excluded from eligibility for statutory transition benefits.

(2) Discuss how the term "laid off" is defined for labor law and other relevant purposes, and provide specific citations if available. Please also discuss how any such standard definitions should affect the determination of the Commission as to whether 35-A M.R.S.A. § 3216 includes Bangor Hydro employees who are offered a comparable job with the new owners within the class of employees eligible for transition benefits.

This Order will be sent to all persons on the service list for Docket No. 98-238, Utility Employee Transition Benefits Rulemaking. Interested persons should file their briefs no later than **January 29, 1999**.

Dated at Augusta, Maine this 14th day of January, 1999.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: WELCH
NUGENT
DIAMOND

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of adjudicatory proceedings are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 6(N) of the Commission's Rules of Practice and Procedure (65-407 C.M.R.11) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which consideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.